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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/698,674	10/31/2003	Richard D. Carter	100202751-1	1022

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EXAMINER

ALMEIDA, DEVIN E

ART UNIT	PAPER NUMBER
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2132

MAIL DATE	DELIVERY MODE
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06/26/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/698,674

Applicant(s)

CARTER, RICHARD D.

Examiner

Devin Almeida

Art Unit

2132

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 5/4/2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-49 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-49 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This action is in response to the papers filed 5/04/2007. Claims 1-49 were received for consideration. No preliminary amendments for the claims were filed. Currently claims 1-49 are under consideration.

Response to Applicant

Applicant's arguments filed 5/04/2007 have been fully considered.

Applicant's arguments with respect to objection to the specification have been fully considered and are persuasive.

Applicant's arguments with respect to objection to Figure 2 have been fully considered and are persuasive.

Applicant's arguments with respect to objection to the Abstract have been fully considered and are persuasive.

Applicant's arguments with respect to objection to formal drawings have been fully considered and are persuasive.

Applicant's arguments with respect to the 35 U.S.C. 101 rejections to claim 34 have been fully considered and are persuasive.

Applicant's arguments with respect to claims 1-6, -11, 13-23, 26-28, 30-34 and 36-49 that DeMello does not teach "storing a track into a memory of a digital entertainment unit; creating a signature tag that identifies the track that is stored in the memory of the digital entertainment unit and that identifies the digital entertainment unit; transmitting the signature tag to a destination address" have been fully considered and

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are not persuasive. DeMello storing a track into a memory of a digital entertainment unit (see figure 1); creating a signature tag (col. 5 line 11-15 i.e. activation certificate) that identifies the track (col. 5 line 11-15 i.e. title) that is stored in the memory of the digital entertainment unit (col. 12 lines 38-45 i.e. the secure repository executable and activation certificate are then downloaded to the client and col. 13 lines 54-65) and that identifies the digital entertainment unit (col. 5 line 11-15 i.e. activation certificate for a particular person and col. 13 lines 54-65 i.e. the download server adds the consumer's name); transmitting the signature tag to a destination address (col. 12 lines 48-51 i.e. the activation certificate is later uploaded to a "download" or "fulfillment" server); and authenticating the track based upon the signature tag (col. 10 lines 28-44 and col. 12 lines 48-51).

Applicant's arguments with respect to the rejections to claims 16, 33, 34, 36, 42, and 48 have been fully considered and are persuasive.

Applicant's arguments with respect to the rejections to claims 2-6, 9-11, 13-15, 17-23, 26-28, 30-32, 37-41, 43-47 and 49 have been fully considered and are persuasive.

Applicant's arguments with respect to the rejections to claims 3, 4, 20, 21, 38 and 44 have been fully considered and are persuasive.

Applicant's arguments with respect to the rejections to claims 18 and 49 have been fully considered and are persuasive.

Applicant's arguments with respect to the rejections to claims 7, 8, 24 and 25 have been fully considered and are persuasive.

Applicant's arguments with respect to the rejections to claims 12, 29 and 35 have been fully considered and are persuasive.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claim 1-6, 9-11, 13-23, 26-28, 30-34 and 36-49 are rejected under 35 U.S.C. 102(e) as being anticipated by DeMello et al (U.S. Patent 7,017,189).

Regarding claims 1, 18 and 49: DeMello discloses a method (regarding claims 1 and 49) and apparatus (regarding claim 18) for remote data backup and restoration, comprising: storing a track into a memory of a digital entertainment unit (see figure 1); creating a signature tag (col. 5 line 11-15 i.e. activation certificate) that identifies the track (col. 5 line 11-15 i.e. title) that is stored in the memory of the digital entertainment unit (col. 12 lines 38-45 i.e. the secure repository executable and activation certificate are then downloaded to the client and col. 13 lines 54-65) and that identifies the digital entertainment unit (col. 5 line 11-15 i.e. activation certificate for a particular person and col. 13 lines 54-65 i.e. the download server adds the consumer's name); transmitting the signature tag to a destination address (col. 12 lines 48-51 i.e. the activation

certificate is later uploaded to a "download" or "fulfillment" server); and authenticating the track based upon the signature tag (col. 10 lines 28-44 and col. 12 lines 48-51).

Regarding claims 16, 33, 34, and 48: DeMello discloses an apparatus (regarding claims 16 and 33), an article of manufacture (regarding claim 34), and a method (regarding claim 48) for remote data backup and restoration, comprising: a digital entertainment unit (see figure 1 and col. 5 lines 30-67) configured to store a track (col. 5 line 11-15 i.e. title) to create a signature tag (col. 5 line 11-15 i.e. activation certificate) that identifies the track that is stored in the digital entertainment unit (col. 4-5 lines 18-28), that identifies the digital entertainment unit (col. 5 line 11-15 i.e. activation certificate for a particular person and col. 13 lines 54-65 i.e. the download server adds the consumer's name), and to transmit the signature tag to a destination address (col. 12 lines 48-51 i.e. the activation certificate is later uploaded to a "download" or "fulfillment" server).

Regarding claims 36 and 42: DeMello discloses a method and apparatus, respectively, for authenticating media content, comprising: receiving a signature tag that identifies a track that is stored in a memory of a digital entertainment unit (col. 10 lines 28-44) and that identifies the digital entertainment unit; and authenticating the track based upon the Signature tag (col. 10 lines 28-44).

Regarding claims 2, 19, 37, and 43: DeMello discloses that the track includes media content (col. 3 lines 38-45).

Regarding claims 3, 20, 38, and 44: DeMello discloses that the signature tag comprises: a first part including information about the customer, digital entertainment unit, and source of the track (col. 5 lines 6-28).

Regarding claims 4 and 21: DeMello discloses that the first part of the signature tag comprises at least one of a unique file name, ID3 data, information related to the digital entertainment unit, customer information, and authentication identifier (col. 7 lines 1-7).

Regarding claims 5 and 22: DeMello discloses that the ID3 data is obtained from a stored MP3 file that includes the track (col. 9 lines 23-56 and Fig. 4).

Regarding claims 6, 23, 39, and 45: DeMello discloses that the signature tag comprises: a second part including content information about the track (col. 9 lines 23-56 and Fig. 4).

Regarding claims 9, 26, 40, and 46: DeMello discloses that the signature tag comprises: a header including a destination address for the signature tag (col. 6 lines 34-60 and Figs. 1-3; examiner notes that target addressing information, including that of the target server, is inherent in the operation of a web interface).

Regarding claims 10 and 27: DeMello discloses storing the signature tag at a server with the destination address (col. 10 lines 40-44).

Regarding claims 11, 28, 41, and 47: DeMello discloses that the signature tag is stored in a customer account folder in the server, and wherein the customer account folder is associated with an owner of the digital entertainment unit (col. 11 lines 30-54).

Regarding claims 13 and 30: DeMello discloses if the track has been authenticated, then restoring the track into the memory of the digital entertainment unit (col. 12-13 lines 38-67 and col. 16-17 lines 53-29) and repairing the digital entertainment unit (col. 12 lines 11-37).

Regarding claims 14 and 31: DeMello discloses that the authenticated track is obtained from a content owner by use of a communication line from a facility of the content owner a server that is associated with the destination address (col. 16-17 lines 53-29).

Regarding claims 15 and 32: DeMello discloses that the authenticated track is obtained from a server (col. 16-17 lines 53-29).

Regarding claim 17: DeMello discloses that the digital entertainment unit further comprises: a processor (Fig. 1 ele. 21); a memory (Fig. 1 ele. 22); and a tag module (col. 4-5 lines 18-28) that is executable by the processor, wherein the tag module is configured to create the signature tag that is associated with the track stored in the memory (col. 4-5 lines 18-28) and to transmit the signature tag to a repair facility (col. 10 lines 28-44).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 7, 8, 24, and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over DeMello et al (U.S. Patent 7,017,189) in view of Margolus et al., (U.S. Patent Publication No. 2004/0255140). Examiner notes that Margolus is a continuation of application No. 09/785,535, filed 16 February 2001, and of provisional application No. 60/183,466, filed 18 February 2000, both of which disclose the relied upon subject matter.

Regarding claims 7 and 24: DeMello discloses a method of remote data backup including content information as indicated regarding claims 6 and 23, above. DeMello does not explicitly disclose that the content information is obtained from a third party service. Margolus discloses that the content information is obtained from a third party service [0161]. Therefore, it would have been obvious to one skilled in the art at the time of the invention to modify DeMello by the use of a third party service as taught by Margolis in order to make more efficient use of storage space (see Margolus [0161]).

Regarding claims 8 and 25: DeMello discloses a method of remote data backup including content information as indicated regarding claims 6 and 23, above. DeMello does not explicitly disclose that the content information comprises album data and track data. Margolus discloses that the content information comprises album data and track data. [0161]. Therefore, it would have been obvious to one skilled in the art at the time of the invention to modify DeMello by the use of album data and track data as taught by Margolis for the benefit of cataloging while eliminating essentially duplicate copies of the same material (see Margolus [0161]).

Claims 12, 29 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over DeMello et al (U.S. Patent 7,017,189) in view of Olarig et al. (U.S. Patent No. 6,032,257).

Regarding claims 12 and 29: DeMello discloses a method and apparatus for remote data backup as indicated regarding claims 1 and 16, above. DeMello does not explicitly disclose sending the digital entertainment unit to the repair facility if the digital entertainment unit is subject to failure. Olarig discloses sending the digital entertainment unit to the repair facility if the digital entertainment unit is subject to failure (col. 2 lines 1-3). Therefore, it would have been obvious to one skilled in the art at the time of the invention to modify DeMello by the function of submitting a unit for repair work as taught by Olarig in order to confirm that the unit malfunction is not due to unauthorized components (see Olarig, col. 4 lines 57-61).

Regarding claim 35: DeMello discloses A method for remote data backup and restoration, the method comprising: loading a track into a memory of a digital entertainment unit (DEU); creating a signature tag that identifies the track that is loaded by a customer into the memory of the digital entertainment unit (DEU) (col. 4-5 lines 18-28) and that identifies the digital entertainment unit; transmitting the signature tag to a destination address (col. 10 lines 28-44) and storing the signature tag into an account folder that is associated with the customer (col. 11 lines 30-54); repairing the DEU (col. 12 lines 11-37), determining the tracks legally obtained by the customer by examining the signature tags in the customer account folder (col. 10 lines 28-44); and loading the tracks into the memory of the DEU (col. 12-13 lines 38-67 and col. 16-17 lines 53-29).

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DeMello does not explicitly disclose sending the DEU that has failed to the repair facility; or returning the DEU to the customer. Olarig discloses sending the DEU that has failed to the repair facility (col. 2 lines 1-3); and returning the DEU to the customer (col. 2 lines 1-3). Therefore, it would have been obvious to one skilled in the art at the time of the invention to modify DeMello by the function of submitting a unit for repair work as taught by Olarig in order to confirm that the unit malfunction is not due to unauthorized components (see Olarig, col. 4 lines 57-61).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Devin Almeida whose telephone number is 571-270-1018. The examiner can normally be reached on Monday-Thursday from 7:30 A.M. to

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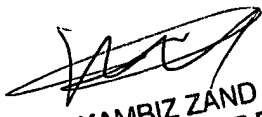
5:00 P.M. The examiner can also be reached on alternate Fridays from 7:30 A.M. to 4:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gilberto Barron, can be reached on 571-272-3799. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

DA

Devin Almeida
Patent Examiner
6/22/2007


KAMBIZ ZAND
SUPERVISORY PATENT EXAMINER